

Decision 06-05-032 May 25, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Conlin-Strawberry Water Company, Inc., a California corporation (U-177-W), for Authority to Sell and Del Oro Water Co., Inc. (U-61-W), for Authority to Buy, the Conlin- Strawberry Water Company Water System in Tuolumne County.

Application 05-12-001
(Filed December 2, 2005)

Investigation on the Commission's Own Motion into the Operations and Practices of the Conlin-Strawberry Water Co. Inc. (U-177-W), and its Owner/Operator, Danny T. Conlin; Notice of Opportunity for Hearing; and Order to Show Cause Why the Commission Should Not Petition the Superior Court for a Receiver to Assume Possession and Operation of the Conlin-Strawberry Water Co. Inc. pursuant to the California Public Utilities Code Section 855.

Investigation 03-10-038
(Filed October 16, 2003)

**OPINION APPROVING SETTLEMENT AND
TRANSFER OF WATER SYSTEM**

I. Summary

The Commission approves an all-party, final settlement entered into by the Conlin-Strawberry Water Co. (Conlin-Strawberry *or* company) and its sole owner, Danny Conlin (Conlin); the Del Oro Water Co. (Del Oro), which already holds a certificate of public convenience and necessity from the Commission; and the Division of Ratepayer Advocates (DRA) of the California Public Utilities Commission. The settlement finalizes all pending matters in two related

proceedings. The settlement approves the sale and transfer of the Conlin-Strawberry water system to Del Oro, the terms and conditions for satisfying sanctions previously imposed by the Commission against Conlin-Strawberry, and for the dismissal of requests to rehear or modify the Commission's earlier decisions concerning the company. The settlement is reasonable, consistent with the law, and in the interests of the ratepayers. The transfer of the water system, constituting utility-related property, is also approved under Public Utilities Code Section 851.

II. Background

The history of Conlin-Strawberry and the Commission's numerous enforcement problems with the water system are presented in detail in Decision (D.) 05-07-010, entered in Investigation (I.) 03-10-038. Many of the continuing enforcement issues date more than 20 years ago to the company's 1982-83 general rate case.

On July 21, 2005, the Commission issued D.05-07-010 which determined that, pursuant to Public Utilities Code Section 855, Conlin-Strawberry is unable or unwilling to adequately serve its ratepayers and that the water system has been actually or effectively abandoned by its owner and is unresponsive to the Commission rules or orders. Accordingly, in Ordering Paragraph 1 of D.05-07-010, the Commission directed the following:

The [Commission's] General Counsel shall proceed immediately to petition the Superior Court, Tuolumne County, for the appointment of a receiver to assume possession of Conlin-Strawberry Water Company Inc. (Conlin-Strawberry *or* company) and all its assets and to operate the water system upon such terms and conditions as the court shall prescribe.

On August 22, 2005, the respondents in I.03-10-038 filed an Application for Rehearing and on October 18, 2005, a Petition for Modification of D.05-07-010.

On November 1, 2005, the Commission's General Counsel filed in the Tuolumne County Superior Court (Court) an application for appointment of a receiver to assume possession and operation of Conlin-Strawberry.¹ Subsequently, the Court continued the matter pending *inter alia*, the Commission issuing a decision on the respondents' rehearing application.

In the meantime, Conlin-Strawberry located a potential buyer of the water system. On December 2, 2005, Conlin-Strawberry and Del Oro filed Application (A.) 05-12-001, requesting Commission's authority to sell the water system from Conlin-Strawberry to Del Oro. An executed "Agreement to Purchase and Sale of Assets" (APSA), dated as of July 20, 2005, was included with the application. On January 5, 2006, DRA protested the application.

After a mediation process conducted by Administrative Law Judge (ALJ) Maribeth Bushey in late January 2006, Conlin-Strawberry, Del Oro, and DRA (parties) agreed to a preliminary list of terms and conditions to be subsequently developed into a written settlement. The Strawberry Property Owners Association (SPOA), although not a party to the settlement, participated in the mediation and, after discussions with its board of directors, approved the principal provisions of the agreement. Further, pursuant to an ALJ ruling dated February 2, 2006, the parties filed on February 17, 2006, a joint stipulation providing for Del Oro to assume interim operation and management of the water system by March 1, 2006, which stipulation incorporated by reference the applicants' "Operations and Maintenance Agreement" (O&M Agreement)

(December 15, 2005). Pursuant to the O&M Agreement, Del Oro has assumed operation and maintenance of the water system.

The parties continued negotiating, drafting, and reviewing the terms and conditions of a settlement throughout March 2006. After the parties executed their settlement, they filed their joint motion to approve the settlement on April 11, 2006.

III. Settlement Overview

The entire settlement agreement is attached to the parties' joint motion to approve the settlement. The following is a summary of the major terms and conditions of the agreement.

Del Oro will purchase the assets of Conlin-Strawberry for \$110,000, the estimated value of Conlin-Strawberry's present rate base. Del Oro does not seek Commission approval of a rate case increase before escrow closes. As soon as practical after the escrow, however, Del Oro will file for a general rate increase not to exceed 40% more than present rate levels.

Conlin-Strawberry and Conlin agree to transfer all of their water rights to Del Oro at the close of escrow. Del Oro will obtain any other water rights that may be necessary to adequately serve the customers. Del Oro will also retain an engineering firm to prepare an engineering study and capital improvement plan for the Conlin-Strawberry water system.

In lieu of a DRA audit, the parties have agreed that the purchase price of \$110,000 will be offset by the following specified amounts of money which are deemed as owed for the benefit of the ratepayers:

¹ No. CV 51675 (Tuolumne County Superior Court, filed Nov. 1, 2005).

- \$48,902.95, which Del Oro will deposit in the California Safe Drinking Water Bond Act (SDWBA) surcharge trust account to remedy a shortfall of the same amount caused by Conlin-Strawberry's failure to make certain SDWBA surcharge deposits;
- \$13,165.13, which Del Oro will pay to Tuolumne County to satisfy past and delinquent property taxes owed on the real property of Conlin-Strawberry; and
- \$11,229.80, which Del Oro will withhold from the purchase price as the sum of flat rate revenues collected by Conlin-Strawberry for the quarter ending March 31, 2006, and owed to Del Oro for management of the Conlin-Strawberry water system.²

Del Oro will assume Conlin-Strawberry's responsibilities for complying with state and federal regulatory rules and regulations (including, but not limited to, requirements of the California Department of Health Services). Del Oro pledges to meet and confer with SPOA, the principal ratepayer organization, to discuss the operation and management of the water system.

Conlin-Strawberry and Conlin will move for withdrawal and/or dismissal with prejudice of their application for rehearing and petition for modification of D.05-07-010 once both of the following conditions have occurred: (1) the Commission approves and adopts the settlement, and (2) escrow on the sale of Conlin-Strawberry to Del Oro closes. Also, DRA will withdraw its Court application for an order appointing a receiver. The settlement provides for enforcement of the settlement and requires that before bringing an action in any forum outside of the Commission, the party must first exhaust its administrative

² See *Settlement* § 1.7.3, at p. 5, for specific details of this term and condition.

remedies at the Commission. The settlement is subject to approval and adoption by the Commission.

IV. Settlement Criteria

The Commission's rules for considering stipulations and settlements (Rule 51 *et seq.*) are not directly applicable to this proposed settlement because the rules apply only to Class A water utilities (*see* Rule 51.10). Conlin Strawberry is a Class D water utility. Nevertheless, the settlement rules provide useful criteria in evaluating the proposed settlement, and the parties themselves have supported their settlement with reference to the substantive requirements of the settlement rules.

Since all parties have executed the proposed agreement, the settlement is properly characterized as an uncontested "all-party" settlement sponsored by all active parties. In such cases, the Commission applies two complementary standards to evaluate the proposed agreement. The first standard, set forth in Rule 51.1(e) and applicable to both contested and uncontested agreements, requires that the "settlement [be] reasonable in light of the whole record, consistent with law, and in the public interest." The second standard is articulated in *San Diego Gas & Electric*, 46 CPUC 2d 538 (1992), and applies to all-party settlements. In the following, the Rule 51.1(e) criteria are discussed first, followed by the *San Diego Gas & Electric* criteria.

A. Rule 51.1(e) Criteria

1. Settlement is Reasonable

Pursuant to Rule 51.1(e), the Commission will not approve settlements, whether contested or uncontested, unless the settlement is

reasonable in light of the whole record, consistent with law, and in the ratepayers' interest. In the *Southern California Gas Co.* decision,³ the Commission held that the parties' evaluation should carry material weight in the Commission's review of a settlement.

The parties have determined, and the Commission agrees, that the proposed settlement will achieve the goals of D.05-07-010 at a significant savings in time, resources, and expense for all the parties, as compared with having a court-appointed receiver sell Conlin-Strawberry (and operate the water system pending sale). The Commission's main objective has been to replace Conlin Strawberry ownership and management with someone who would be willing to serve the ratepayers and operate and manage the water system in compliance with the Commission's and other regulatory agencies' rules and regulations.

The proposed settlement substantially advances the Commission goal. Conlin-Strawberry and Conlin are voluntarily agreeing to sell the water system to Del Oro. Del Oro has committed to comply with the Commission's and other regulatory agencies' rules and regulations. Del Oro also has pledged to meet and confer periodically with the members of SPOA and has agreed to retain an engineering firm to evaluate and design a capital improvement plan for the water system. These are other objectives that the Commission has sought to enforce since 1995 or earlier.

D.05-07-010 imposed an award of \$107,000 in reparations (including interest) against Conlin-Strawberry. Of the \$110,000 purchase price under the proposed settlement, \$73,298 will be deducted from the amount otherwise

³ *South. Calif. Gas Co.*, D.00-09-034, 2000 Cal. PUC LEXIS 694, at p. *29 & *31.

payable to sellers and will be applied to the water system's SDWBA trust account, delinquent property taxes on water system property, and rate collections due Del Oro. While these amounts will be applied for the benefit of the water system and not paid to individual ratepayers, as previously ordered under D.05-07-010, ratepayers will benefit by reduced indebtedness, paid-up taxes, and proper application of their previously collected rate payments.

If the Commission were to proceed with a court-appointed receiver to sell Conlin-Strawberry for the best offer, moving parties estimate the additional cost to the ratepayers, in legal fees and related expenses, as approximately \$50,000 or more. Further, the receiver would have to obtain court approval of any proposed sale and an interested party could challenge the sale in a court hearing. The existing, ineffectual management would remain in place until a receiver was appointed. This option presents more risks and uncertainties, greater expenses to the ratepayers, and more delay than reaching a settlement. Therefore, approval of the proposed settlement is preferable to the other available option, *i.e.*, proceeding with a receiver's sale of Conlin-Strawberry. The proposed settlement is reasonable and should be adopted by the Commission.

2. Consistent with the Law

All the parties have entered into this proposed settlement voluntarily and they represent that they have reviewed the settlement with their respective legal counsels or technical staff. The Commission's approval and adoption of the proposed settlement will not constitute an admission or concession by any party regarding any fact or matter of law in dispute in this proceeding. The proposed settlement is not precedent or policy of any kind for any purpose in any current or future proceedings. The proposed settlement is consistent with the law.

3. Public Interest

The proposed settlement is in the ratepayers' interest because the parties have agreed to transfer Conlin-Strawberry to Del Oro for approximately the value of the rate base, \$110,000. In effect, the revenue requirements for the ratepayers will remain level with past recovery levels. Although a number of capital improvements will be necessary, Del Oro has agreed to raise rates no more than 40% over current rates in the next general rate case application. This will avoid causing the ratepayers "rate shock." Further, Conlin-Strawberry has agreed to offset as a credit against the purchase price of \$110,000, Del Oro's remittance of approximately \$49,000 in partial repayment of the SDWBA loan, and of approximately \$13,165 to Tuolumne County for outstanding property taxes. Conlin-Strawberry is also waiving approximately \$11,230 of the purchase price for the amount of flat rate revenues that were collected prior to Del Oro's management. These facts demonstrate that the proposed settlement is beneficial to the ratepayers and in the public interest.

B. San Diego Gas & Electric Criteria

As a precondition to approving such a settlement, the Commission should also ascertain that the criteria set forth in *San Diego Gas & Electric* are satisfied:

1. The proposed all-party settlement commands the unanimous sponsorship of all active parties to the proceeding;
2. The sponsoring parties are fairly representative of the affected interests;
3. No settlement term contravenes statutory provisions or prior Commission decisions; and
4. Settlement documentation provides the Commission with sufficient information to permit it to discharge its future regulatory obligations with respect to the parties and their interests.

The proposed settlement is sponsored by the three active parties in A.05-12-001 (Conlin-Strawberry, Del Oro, and DRA) and the two active parties in I.03-10-038 (DRA and Conlin-Strawberry). While the Commission's Water Division originally prosecuted I.03-10-038, DRA represents that, based on Commission staff reorganization, it has been substituted for the Water Division in that proceeding. SPOA, an organization of many of the ratepayers, originally brought many of the water system's problems to the attention of Commission staff. While not active parties in either proceeding, SPOA has attended almost all formal hearings and conferences, participated in the mediation, and its board of directors has approved the transfer of operations and management to Del Oro and the other basic terms of the proposed settlement. The parties sponsoring the proposed settlement reflect the interests and perspectives of the seller, buyer, and ratepayers.

As previously discussed, the proposed settlement is consistent with the law. The proposed settlement is sufficiently detailed to allow future Commission oversight, and the agreement specifically recognizes the Commission's primary jurisdiction over any interpretation, enforcement, or remedies pertaining to the settlement.

C. Conclusion

The proposed settlement satisfies the Commission's requirements for an all-party settlement under Rule 51 and the *San Diego Gas & Electric* decision. The settlement is reasonable in consideration of the whole record, consistent with the law, and in the public interest. While the settlement does compromise the reparations imposed in D.05-07-010 against Conlin-Strawberry, a substantial portion of the modest sales proceeds will be applied to the benefit of ratepayers. The settlement, once approved, will immediately make possible new ownership

and management of a long-troubled water system, thereby avoiding further delaying litigation before the Commission and the Superior Court.

V. Categorization and Need for Hearing

Proceeding A.05-12-001 has been categorized as ratesetting. Because of the proposed settlement, evidentiary hearings are no longer necessary.

VI. Waiver of Comment Period

Pursuant to Rule 77.7(f)(2), the period for public review and comment is waived since the requested approval of the proposed settlement and the underlying application are now uncontested matters; and the draft decision grants the requested relief. Also, pursuant to Section 311(g)(3) of the Public Utilities Code, the proposed settlement is an uncontested matter pertaining solely to water companies.

VII. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner. John E. Thorson is the assigned ALJ and principal hearing officer in this proceeding.

Findings of Fact

1. Conlin-Strawberry, a water utility, was granted a CPCN by the Commission in 1963, pursuant to D.66037.
2. Del Oro, a water utility, also holds a CPCN granted by the Commission.
3. The numerous and, in many instances, continuing enforcement problems with Conlin-Strawberry extend back as far as the company's 1982-83 general rate case.
4. On July 21, 2005, the Commission issued D.05-07-010 which determined that, pursuant to Public Utilities Code Section 855, Conlin-Strawberry is unable or unwilling to adequately serve its ratepayers and that the water system has been actually or effectively abandoned by its owner and is unresponsive to the

Commission rules or orders. The Commission directed its General Counsel to proceed immediately to petition the Court for the appointment of a receiver to assume possession of the water system and assets.

5. The respondents in I.03-10-038 filed an Application for Rehearing and a Petition for Modification of D.05-07-010.

6. On November 1, 2005, the Commission's General Counsel filed in Court an application for appointment of a receiver to assume possession and operation of Conlin-Strawberry. Subsequently, the Court continued the matter pending the Commission issuing a decision on the respondents' rehearing application.

7. In the meantime, Conlin-Strawberry located a potential buyer of the water system. On December 2, 2005, Conlin-Strawberry and Del Oro filed A.05-12-001, requesting Commission's authority to sell the water system from Conlin-Strawberry to Del Oro. An executed APSA, dated July 20, 2005, was included with the application.

8. On January 5, 2006, DRA protested the application.

9. Following mediation and subsequent negotiations, Conlin-Strawberry, Del Oro, and DRA reached a settlement of all issues in both proceedings. The SPOA, although not a party to the settlement, participated in the mediation and negotiations; and, after discussions with its board of directors, approved the principal provisions of the agreement.

10. On February 17, 2006, the parties filed a joint stipulation providing for Del Oro to assume interim operation and management of the water system by March 1, 2006, which stipulation incorporated by reference the applicants' O&M Agreement. Pursuant to the O&M Agreement, Del Oro has assumed operation and maintenance of the water system.

11. On April 11, 2006, the parties filed their joint motion to approve the overall proposed settlement, including the transfer of the water system to Del Oro.

12. The proposed settlement resolves every pending and outstanding issue in both A.05-12-001 and I.04-10-038.

13. The proposed settlement is supported by all of the active parties eligible to participate in both proceedings. No party opposes the proposed settlement.

14. The active parties are fairly reflective of the affected interests in both proceedings.

15. The proposed settlement, including the allocation of sales proceeds, provides a fair, reasonable, and complete satisfaction of the relief ordered in D.05-07-010. While the proposed settlement involves a compromise of the monetary sanctions ordered in D.05-07-010, the transaction costs likely to be incurred in the contested Court receivership proceeding and in contested proceedings to modify or rehear D.05-07-010 are reasonably anticipated to exceed the compromised amount.

16. Of the \$110,000 sale price payable to seller, \$73,298 will be deducted and applied to the benefit of ratepayers.

17. Pursuant to an interim agreement, Del Oro has already assumed active management of the water system. Del Oro's continued management of the water system will improve water service and reliability. If the proposed agreement were disapproved, Del Oro would withdraw as manager, thereby producing even more risk and uncertainty for ratepayers than they have previously experienced.

18. Del Oro has represented that it will file an initial general rate increase not to exceed 40% more than present rates.

Conclusions of Law

1. The proposed settlement is an uncontested agreement as defined in Rule 51(f) and an all-party settlement under *San Diego Gas & Electric*, 46 CPUC 2d 538 (1992). The proposed settlement satisfies the requirements of Rule 51(f) and *San Diego Gas & Electric*.
2. An evidentiary hearing is not required.
3. The proposed settlement, once implemented, provides a fair, reasonable, and complete satisfaction of the relief ordered in D.05-07-010.
4. The proposed settlement, including Del Oro's representation that it will file for an initial general rate increase not to exceed 40% more than present rates, is reasonable in consideration of the whole record, consistent with law, and in the public interest.
5. The proposed settlement should be approved.
6. Del Oro is legally qualified to assume ownership and operation of the water system as a water utility.
7. The requirements of Public Utilities Code Section 851 are satisfied. The requested transfer of the water system should be approved.
8. The period for public review and comment should be waived since the requested approval of the proposed settlement and the granting of the underlying application are uncontested matters; and the draft decision grants the relief requested by the parties.
9. This decision should be effective immediately to enable the settling parties to implement the settlement without delay.

O R D E R

IT IS ORDERED that:

1. The motion of Conlin-Strawberry Water Company (Conlin-Strawberry) and its sole owner, Danny Conlin; Del Oro Water Company (Del Oro), and the Division of Ratepayer Advocates (DRA) of the California Public Utilities Commission (all referred to as the settling parties) to approve and adopt the proposed Settlement Agreement of the Parties (April 3, 2006) is granted.

2. The application of Conlin-Strawberry (seller) and Del Oro (buyer), in Application (A.) 05-12-001, for the Commission's authorization for seller to transfer and buyer to acquire the Conlin-Strawberry water system is granted.

3. Within 10 days of the transfer of title to real and personal property involved in the sale, Del Oro shall file an advice letter, referencing this decision, notifying the Commission's Water Division and DRA of the completed transfer and attaching copies of the deeds or bills of sale including the final legal descriptions of the conveyed property. Del Oro shall also file any advice letter necessary to effectuate tariffs for rates and terms and conditions of service.

4. Del Oro may file an application for an initial general rate increase of not more than 40% more than present rates. The Commission will consider the application on its merits.

5. The parties are ordered to perform their respective obligations under the approved settlement and to file in these proceedings any documents or pleadings necessary to effectuate the settlement.

6. Without any further authorization of the Commission or its officers, the parties are authorized to file in one or both proceedings any pleadings necessary to withdraw or dismiss pending petitions, applications, or motions.

7. This decision will be filed in both A.05-12-001 and Investigation (I.) 03-10-038.

8. No hearings are necessary in these proceedings.

9. A.05-12-001 and I.03-10-038 are closed.

This order is effective today.

Dated May 25, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners